

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 263

June 14, 1995, 5:00 p.m.  
Page S-8346 Temp. Record

## TELECOMMUNICATIONS/Obscene-Indecent-Harassing Internet Messages

**SUBJECT:** Telecommunications Competition and Deregulation Act of 1995 . . . S. 652. Exon/Coats substitute amendment No. 1362 to the Leahy modified amendment No. 1288.

### ACTION: AMENDMENT AGREED TO, 84-16

**SYNOPSIS:** As reported, S. 652, the Telecommunications Competition and Deregulation Act of 1995, will amend telecommunications laws and reduce regulations in order to promote competition in the telecommunications industry by eliminating barriers that prevent telephone companies, cable companies, and broadcasters from entering one another's markets. It will also permit electric utilities to enter the cable and telephone markets. Judicial control of telecommunications policy, including the "Modified Final Judgment" regime, will be terminated.

The Leahy modified amendment would direct the Attorney General to provide Congress within 150 days of enactment of this bill a report and an accompanying legislative proposal on means for restricting access to unwanted material in interactive telecommunications systems. The amendment would also make it possible for 30 Senators to expedite the consideration of that proposal by signing a petition to discharge it from committee consideration and move it to the calendar.

**The Exon/Coats substitute amendment to the Leahy amendment** would define and punish obscene, indecent, and harassing use of telecommunication devices (computer communications). The definitions and punishments for these offenses would be the same as those applied for obscene, indecent, or harassing use of telephones or the mail. More specifically, a fine of up to \$100,000 and a sentence of up to two years could be imposed for the following:

- initiating a communication and making an obscene, lewd, lascivious, filthy, or indecent communication with the intent of annoying, abusing, threatening, or harassing another person;
- making an anonymous communication with the intent of annoying, abusing, threatening, or harassing any person receiving the communication;
- repeatedly initiating communications with the sole intent of harassing the receiver of the communications;
- knowingly making available by means of any telecommunications device any obscene communication in any form, regardless

(See other side)

YEAS (84)				NAYS (16)		NOT VOTING (0)	
Republican (52 or 96%)		Democrats (32 or 70%)		Republicans (2 or 4%)	Democrats (14 or 30%)	Republicans (0)	Democrats (0)
Abraham	Hutchison	Akaka	Harkin	Chafee	Biden		
Ashcroft	Inhofe	Baucus	Heflin	Jeffords	Bingaman		
Bennett	Kassebaum	Boxer	Hollings		Feingold		
Bond	Kempthorne	Bradley	Inouye		Glenn		
Brown	Kyl	Breaux	Johnston		Kennedy		
Burns	Lott	Bryan	Kerrey		Leahy		
Campbell	Lugar	Bumpers	Kerry		Levin		
Coats	Mack	Byrd	Kohl		Lieberman		
Cochran	McCain	Conrad	Lautenberg		Moseley-Braun		
Cohen	McConnell	Daschle	Mikulski		Moynihan		
Coverdell	Murkowski	Dodd	Nunn		Murray		
Craig	Nickles	Dorgan	Pell		Robb		
D'Amato	Packwood	Exon	Pryor		Simon		
DeWine	Pressler	Feinstein	Reid		Wellstone		
Dole	Roth	Ford	Rockefeller				
Domenici	Santorum	Graham	Sarbanes				
Faircloth	Shelby						
Frist	Simpson						
Gorton	Smith						
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
Helms	Warner						

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

of who initiated the communication;

- knowingly permitting the use of a telecommunications facility under one's control to be used for obscene communications;
- knowingly making available to a minor by means of any telecommunications device any indecent communication in any form, regardless of who initiated the communication; and
- knowingly permitting the use of a telecommunications facility under one's control to be used for indecent communications with minors.

Providing incidental access to computer networks or facilities that is then misused to make prohibited communications would not be an offense. Additionally, the maximum fines for obscene cable programming and obscene language on radio would be increased to \$100,000.

NOTE: Following the vote, the Leahy amendment, as amended, was adopted by voice vote.

**Those favoring the amendment contended:**

If in any American neighborhood an individual were distributing pornographic photos, cartoons, videos, and stories to children, or if someone were posting lewd photographs on lampposts and telephone poles for all to see, or if children were welcome to enter and browse adult book stores and triple-X-rated video arcades, there would be public outrage. Most people, if they knew of such offenses, would demand the arrest and punishment of the guilty parties. We regret to report that such offenses are occurring every day in every American neighborhood through computer communications on the Internet. The Exon/Coats amendment would put a stop to these reprehensible practices by applying the same punishments that have already been devised for similar misuse of telephone and mail communications. We do not need one more study, as proposed in the Leahy amendment; we need to criminalize the filth that is polluting the Internet.

The Internet has become the largest distributor of depravity in the world. One study found that there are more than 450,000 pornographic images and text files available to anyone with a modem. This vast library of obscenity and indecency was accessed 6.4 million times just last year. The type of images that are available are far worse than anything found in Playboy or Penthouse. Approximately one-fourth of the images involve the torture of women. Bestiality, child molestation, and infant molestation images and descriptions are common. Senators who contend that this sick trade is confined to subscriber bulletin boards are incorrect. Such bulletin boards, disturbingly, do exist, but their operators also litter the free bulletin boards, to which everyone has unlimited access, with pictures and text in order to lure new subscribers to their paid services. Further, individual perverts also post all manner of vile pictures and language where anyone may access it. To demonstrate the easy availability of extremely offensive pornographic images, our staffs downloaded several of them yesterday from free Internet sites. We ask Senators to look at these pictures, and then explain to us why they think that we should delay banning their accessibility to any child with a modem.

Of the 6.8 million homes with on-line computer accounts, 35 percent have children under the age of 18. In many families, adults have trouble using video cassette recorders, let alone computers. Their children, though, have no problem mastering any new technology, including the technology needed "to surf" the Internet. The only barriers between those children and the obscene and indecent material on the Internet are perfunctory on-screen warnings which inform them they are on their honor not to look. Children, of course, look. The Internet brings hardcore pornography to the bedrooms of children around America, without their parents' knowledge. These children are easy targets for pedophiles seeking victims to rape and sometimes murder. Not realizing the danger they are in, children will often give their names, addresses, and phone numbers to people they meet over the Internet. Recently, one man attempted to gauge the severity of the problem by posing as a 13-year-old on his computer. In the course of one evening, he was approached by more than 20 pedophiles.

As horrendous as the cases of victimization have been, the greater problem is the damage that pornography inflicts on the human spirit. Not all users of pornography become rapists and murderers, but they do become deadened to normal human values when they are continuously exposed to the worst excesses of human sexual depravity. When sexual violence and gross indecency are available to anyone at the touch of a button, both an individual and a culture become desensitized. The images and messages become like a novocaine, numbing the capacity for outrage.

In arguing against this amendment, some Senators have stated that they believe that it would unconstitutionally infringe on free speech rights, particularly with its prohibitions on harassment and indecent communications. However, they are basing their claims on arguments that have already been decided in court. The restrictions in this amendment parallel restrictions on phones and the mail which have been upheld. Some of the finest constitutional experts in the Senate have cosponsored the Exon/Coats amendment, and legal groups such as the National Law Center for Children and Families have endorsed it. This amendment is carefully drawn so only people guilty of obscene communications or people guilty of deliberately sending unwanted indecent or harassing communications would be punished. All of the questions of scope and all of the definitional questions have been answered. Those Senators who believe that the Exon/Coats amendment would infringe on the First Amendment are simply wrong.

Other Senators have argued that the amendment will lessen Internet use. However, many Americans currently refuse to join the Internet because it is saturated with pornography. Some estimates are that as many as 75 percent of home computer owners have not gone on-line because of this reason. Eliminating pornography would thus likely result in a net increase of Internet users, not a net

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decrease. Some perverts no doubt would be upset if they could not gain access to torture, bestiality, or child abuse files, but we are not concerned with catering to their interests. If they stop using the Internet, then so much the better.

The problem that is addressed by the Exon/Coats amendment is severe, the solution that it offers has proven effective, and that solution has been upheld by the courts. We do not need one more study, as proposed by the Leahy amendment. We need to approve the Exon/Coats amendment.

**Those opposing** the amendment contended:

We object to this amendment because it is too broad. Our colleagues, shocked by some of the obscenity that is available on the Internet, have proposed an unduly restrictive, unworkable, and unconstitutional solution to the problem. Though we respect their motive, we suggest that the underlying Leahy amendment would better meet their goal. The Leahy amendment would require the Department of Justice to study how best to control obscene language and pictures on the Internet without restricting legitimate communications or violating constitutional requirements. It would then provide a means for expediting consideration of the Justice Department's recommendations. This process would result in swift approval of an enforceable law against Internet pornography, especially against such pornography aimed at children.

The Exon/Coats amendment, on the other hand, would result in undue restrictions being placed on legitimate Internet communications. Further, those restrictions would likely be found unconstitutional. Its language is so broad and vague that it would subject an American citizen to criminal liability for making what is termed a "filthy comment" which is "intended" to annoy another person. Typing one of the so-called seven dirty words in a computer message could land one in jail for up to 2 years under the Exon/Coats amendment.

While it is true that the amendment is based on obscenity and indecency standards that have been developed for phone and mail use and which have been held to be constitutional, it does not then follow that the same standards can be transferred to computer communications without raising First Amendment questions. We remind our colleagues that it took 10 years before the Federal Communications Commission could come up with a means of applying the standards to phone use that the courts agreed was constitutional. In reviewing such standards, courts demand that the least restrictive means be used to meet community standards of decency. When talking about bulletin boards, rather than person-to-person communications, and when talking about world-wide access to those bulletin boards, it is going to be very difficult to determine the least restrictive means of limiting obscene and indecent communications, and it is going to be even more difficult to determine the "community" standards that apply.

Frankly, we would prefer that the Government just stay out of the whole business. The market is changing so rapidly, and the number and type of communications are so enormous, that the Government cannot possibly keep up. Close regulation of the Internet would be required to police it effectively. That regulation would stymie growth and innovation. If we try and police the Internet we may well destroy it. The preferable solution is to let the free market wipe out the pornography. We already know of several software packages that block access to pornographic images or that monitor the Internet sites that are accessed. These packages make it possible for parents to retain control over their children's access to pornography. Though some Senators may counter that some children and pornographers have also already learned to move around these new software packages, the fact remains that these early efforts have already met with some success. We suspect that as time goes on and the industry matures what little pornography is actually on the Internet will become increasingly difficult to reach.

Though some obscene images can be found if one looks hard enough, the reality is that very little offensive matter is on-line. Some obscene subscriber services exist, but free services are nearly free from pornography. Moving the Government into this area as proposed by the Exon/Coats amendment may end up with the Government placing universal bans on such books as the *Catcher in the Rye* because some people find it indecent, and the fact that some people find it indecent is well known. This type of Government censorship should not be countenanced. Certainly parents have every right, and duty, to monitor their children's access to works which they find morally objectionable, but the Government should not be involved.

Some materials are clearly so objectionable by any standards that they should not be on the Internet. We will support limits on such obscene materials if they can be constitutionally imposed. The Exon/Coats amendment, though, goes much further than banning such materials, so we urge our colleagues to join us in rejecting it.